

APPENDIX C

JOSEPH LUTZ - April 26, 2007

Page 1

CAUSE NO. 874676

UNIFUND CCR PARTNERS,) IN THE COUNTY CIVIL COURT
)
Plaintiff,)
)
v.) AT LAW NO. 1
)
GERIANNE M. HUFFMAN,)
)
Defendant.) OF HARRIS COUNTY, TEXAS

ORAL DEPOSITION OF

JOSEPH LUTZ

APRIL 26, 2007

ORAL DEPOSITION of JOSEPH LUTZ, produced
as a witness at the instance of the Defendant, and duly
sworn, was taken in the above-styled and numbered cause
on the 26th of April, 2007, from 9:13 a.m. to
11:11 a.m., before Peggy A. Hebert, CSR in and for the
State of Texas, reported by machine shorthand, at the
offices of Hull & Associates, P.C., 6200 Savoy,
Suite 440, Houston, Texas 77036, pursuant to the Texas
Rules of Civil Procedure and the provisions stated on
the record or attached hereto.

HEBERT REPORTING SERVICE
(713) 626-2629

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JOSEPH LUTZ - April 26, 2007

5 (Pages 14 to 17)

Page 14	Page 16
<p>1 A. That sounds about right.</p> <p>2 Q. So you might sign between 45 to 50 of these per</p> <p>3 day that you're at the office?</p> <p>4 A. I'd say that's a reasonable sum, yes, sir.</p> <p>5 Q. Reasonable estimate, anyway?</p> <p>6 A. Yes.</p> <p>7 Q. Let me go through this, and I'm going to take</p> <p>8 this paper clip off. What we have with Exhibit No. 1 on</p> <p>9 the top is a two-page affidavit signed by you; correct?</p> <p>10 A. Yes.</p> <p>11 Q. And then next there is something called an</p> <p>12 "Affidavit of Indebtedness" signed by Kim Kenney?</p> <p>13 A. Yes.</p> <p>14 Q. She's also with Unifund; correct?</p> <p>15 A. That's correct. Her office is right around the</p> <p>16 corner from mine.</p> <p>17 Q. All right. The next document on Exhibit No. 1</p> <p>18 is something called a "Unifund Statement"?</p> <p>19 A. That's correct. That is never sent to the</p> <p>20 debtor. That's sent to the law firm only.</p> <p>21 Q. All right. And then with this particular</p> <p>22 affidavit there's an additional 13 pages of documents</p> <p>23 that are marked Citi Platinum Select Card?</p> <p>24 A. That's correct.</p> <p>25 Q. And these purport to be computer copies of</p>	<p>1 Q. All right. Do you know how many of these you</p> <p>2 sign per month for Hull & Associates?</p> <p>3 A. No.</p> <p>4 Q. No sense of that? It's just you get so many?</p> <p>5 A. No, I just don't know. I mean, I get --</p> <p>6 usually, when I get back to the office tomorrow, I'll</p> <p>7 have maybe 100 affidavits, and there might be seven from</p> <p>8 Hull and ten from Regent and you go on down the line,</p> <p>9 and I have no idea --</p> <p>10 Q. All across the country?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. But -- all right. Let me see if I have</p> <p>13 this right, then. With regard to Exhibit No. 1, the top</p> <p>14 two pages is an affidavit for you to sign. That's</p> <p>15 generated by the lawyer for Unifund --</p> <p>16 A. That's correct.</p> <p>17 Q. -- who will be in the field?</p> <p>18 A. That's correct. I'm sorry.</p> <p>19 Q. Not in Cincinnati?</p> <p>20 A. That's right.</p> <p>21 Q. All right. But then the next page, which is</p> <p>22 the affidavit of indebtedness, this is actually</p> <p>23 generated by Unifund; correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And then the next page, which is called the</p>
Page 15	Page 17
<p>1 monthly statements from Citibank?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. But they're not copies of the originals?</p> <p>4 They're more or less a computer version of them;</p> <p>5 correct?</p> <p>6 A. They are the same as the copy -- as the</p> <p>7 statement which was mailed to your debtor.</p> <p>8 Q. All right. Let me --</p> <p>9 A. They're electronically prepared under the same</p> <p>10 method as the statement which goes to the debtor.</p> <p>11 Q. Have you ever worked for Citibank?</p> <p>12 A. No, but I visited --</p> <p>13 Q. No, no, no. I'm just asking. I'll ask more</p> <p>14 questions. Have you ever worked for Citibank?</p> <p>15 A. No.</p> <p>16 Q. All right. Back to these documents. The top</p> <p>17 two pages of Exhibit 1 are the affidavit that's signed</p> <p>18 by you. That's generated by Unifund; correct?</p> <p>19 A. The affidavit itself?</p> <p>20 Q. Yes.</p> <p>21 A. That was generated by Hull and sent to us for</p> <p>22 my signature.</p> <p>23 Q. All right. So basically you get different form</p> <p>24 affidavits from different law firms?</p> <p>25 A. That's correct.</p>	<p>1 "Unifund Statement," marked on this one Exhibit A, this</p> <p>2 is also generated by Unifund?</p> <p>3 A. That's correct.</p> <p>4 Q. Then the last 13 pages here that have the --</p> <p>5 that are denominated Citi Platinum Select Card, these</p> <p>6 would have been generated by Citibank. Am I right?</p> <p>7 A. That's correct.</p> <p>8 Q. These 13 pages, were they mailed or e-mailed or</p> <p>9 faxed to Unifund by the bank?</p> <p>10 A. I request them, and they are electronically</p> <p>11 sent to me.</p> <p>12 Q. Okay. So the transmission from Citibank to</p> <p>13 Unifund is an electronic transmission?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. Who specifically at Unifund arranged for</p> <p>16 the transmission of these documents to Unifund from</p> <p>17 Citibank?</p> <p>18 A. When we purchase a block of charged off credit</p> <p>19 card debt, we are given access to all the accounts in</p> <p>20 that block by Citibank. When we have an account number</p> <p>21 that we decide to pursue and turn over to attorneys, we</p> <p>22 then request, and I could be -- there's three of us.</p> <p>23 Kim Kenney, I, and Jeff Schaeffer, I would assume, can</p> <p>24 request these documents. And I don't know for sure</p> <p>25 about Jeff because he's just a head of our entire</p>

JOSEPH LUTZ - April 26, 2007

13 (Pages 46 to 49)

Page 46	Page 48
<p>1 Q. That's not my question.</p> <p>2 A. I understand what you're saying. No, I</p> <p>3 haven't.</p> <p>4 Q. Okay. Now, looking at the 13 pages that have a</p> <p>5 reference to Citi on them that are attached to</p> <p>6 Exhibit No. 1, is either the sum of \$6,107.47 or</p> <p>7 \$13,156.48 to be found on any of them?</p> <p>8 A. I'm trying to see the sequence, if they have</p> <p>9 it.</p> <p>10 Q. I think they're in an order, but I don't</p> <p>11 remember whether it's ascending or descending.</p> <p>12 A. I think they're in chronological order, yeah.</p> <p>13 No.</p> <p>14 Q. Okay. I looked at the last record in there. I</p> <p>15 think the latest one is dated November 12th of 2002, and</p> <p>16 I think it may be on the bottom. And doesn't it reflect</p> <p>17 a balance of \$5,824.78?</p> <p>18 A. That's correct.</p> <p>19 Q. My understanding is that, with most credit card</p> <p>20 accounts, they are subject to unilateral change by the</p> <p>21 credit card issuer. Is that a fair statement?</p> <p>22 A. I'm sorry?</p> <p>23 Q. Hopefully I can remember it. It's my</p> <p>24 understanding with most credit cards, that they are</p> <p>25 subject to unilateral change by the credit card issuer;</p>	<p>1 Q. So we don't have exact proof of what the</p> <p>2 interest rates were for the period -- the last -- during</p> <p>3 the entire period of her account; isn't that right?</p> <p>4 MS. BRIGGS: Objection. Form.</p> <p>5 Q. (By Mr. Tomlinson) We don't know that?</p> <p>6 A. That's correct.</p> <p>7 Q. What you told me before about the Affidavit of</p> <p>8 Indebtedness signed by Ms. Kenney, you don't know how</p> <p>9 she came up with these numbers in here, do you?</p> <p>10 A. I don't.</p> <p>11 Q. Okay. In the last sentence in the third full</p> <p>12 paragraph on page 2 of your affidavit marked as Exhibit</p> <p>13 No. 1, it reads, quote, "... this amount is just and</p> <p>14 true, due and owing, and all just and lawful offsets,</p> <p>15 payments and credits have been allowed." Isn't that</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. How do you personally know this?</p> <p>19 A. I guess I have to take the word of people who</p> <p>20 we pay and -- who are paid to perform these services.</p> <p>21 Q. And my question to you is, your only personal</p> <p>22 knowledge before signing the affidavit had to do with</p> <p>23 reviewing a spread sheet?</p> <p>24 A. That's correct.</p> <p>25 Q. That had only very basic information?</p>
Page 47	Page 49
<p>1 isn't that right?</p> <p>2 A. That's correct.</p> <p>3 Q. And one of those unilateral changes that they</p> <p>4 can impose, the credit card issuer can impose, is a</p> <p>5 change in the interest rate?</p> <p>6 A. That's correct.</p> <p>7 Q. So if you don't have all the monthly</p> <p>8 statements, you don't know the interest rate that was</p> <p>9 imposed from month to month to month during the entire</p> <p>10 time period of this account, do you?</p> <p>11 A. Generally speaking, down here it shows the</p> <p>12 interest rate that was charged at specific times.</p> <p>13 Q. And doesn't it change from month to month?</p> <p>14 A. Depending on the reliability of the credit card</p> <p>15 holder.</p> <p>16 Q. I understand that, but I'm just asking --</p> <p>17 A. Yeah. Yes, it changes month to month.</p> <p>18 Q. And the problem here is we only have some of</p> <p>19 those monthly statements?</p> <p>20 A. That's correct.</p> <p>21 Q. And they're not even in exact adjacent order to</p> <p>22 one another; isn't that right?</p> <p>23 A. I guess, yes.</p> <p>24 Q. There are gaps between them?</p> <p>25 A. Yes.</p>	<p>1 A. That's correct.</p> <p>2 Q. And it wouldn't have really told you whether or</p> <p>3 not all offsets and credits had been given; isn't that</p> <p>4 right?</p> <p>5 A. No. That's correct.</p> <p>6 Q. And without an entire -- access to an entire</p> <p>7 payment history, you're not in a position to say of your</p> <p>8 own personal knowledge whether or not all offsets,</p> <p>9 payments, and credits have been allowed, are you?</p> <p>10 MS. BRIGGS: Objection. Form.</p> <p>11 A. Only due to our agreement with Citibank when we</p> <p>12 purchased this block am I able to say that. I'm aware</p> <p>13 of what the terms of the agreement are, and that says</p> <p>14 that we have a, quote, "clean debt," that everything has</p> <p>15 been taken care of by Citibank, and there's no</p> <p>16 subsequent payments or no dispute. There has not</p> <p>17 been -- nothing that would negate our purchase of that</p> <p>18 specific account.</p> <p>19 Q. (By Mr. Tomlinson) And the number given to it?</p> <p>20 A. That's correct. Now, as you know, there's</p> <p>21 thousands of accounts involved with that purchase.</p> <p>22 Q. The fourth page of Exhibit No. 1 is called a</p> <p>23 Unifund statement. You mentioned before that this was</p> <p>24 never sent to the --</p> <p>25 A. The debtor.</p>

JOSEPH LUTZ - April 26, 2007

14 (Pages 50 to 53)

Page 50	Page 52
<p>1 Q. -- consumer?</p> <p>2 A. It's just sent to our law firm.</p> <p>3 Q. Okay. Is this the only piece of information</p> <p>4 that's sent to the law firm when they are preparing a</p> <p>5 lawsuit?</p> <p>6 A. I doubt it. I don't know exactly what's sent</p> <p>7 to the law firm.</p> <p>8 Q. All right. Now, when you sign this affidavit</p> <p>9 marked as Exhibit No. 1, this had been prepared by</p> <p>10 Hull & Associates; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And even seems to so indicate at the bottom --</p> <p>13 A. That's correct.</p> <p>14 Q. -- in the footer; correct?</p> <p>15 A. Uh-huh. Yes.</p> <p>16 Q. I'm sorry. She can't take an uh-huh.</p> <p>17 A. I agree, yes.</p> <p>18 Q. I'm sorry. I apologize.</p> <p>19 Is this -- what is marked as Exhibit A on</p> <p>20 the bottom of it, is this the only thing you know for</p> <p>21 sure that goes to the law firm before these affidavits</p> <p>22 are prepared?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Do you happen to know why it says at the</p> <p>25 bottom of this page marked as "Unifund Statement" in</p>	<p>1 marked as Exhibit 1?</p> <p>2 A. When we got this block of information, that was</p> <p>3 part of the information which was available when we got</p> <p>4 this block of charged off credit card debt.</p> <p>5 Q. So is it for each account that's part of a pool</p> <p>6 of accounts that you purchased, you get a little screen</p> <p>7 or a portion of a screen that gives you some basic</p> <p>8 information about an account?</p> <p>9 A. Yes.</p> <p>10 Q. And one of the bits of information on there is</p> <p>11 the date the account was opened?</p> <p>12 A. That's correct.</p> <p>13 Q. Is that the only bit of information that's not</p> <p>14 also on the Unifund statement?</p> <p>15 A. Well, this is information I have available.</p> <p>16 Q. I know. I'm just trying to find out what else</p> <p>17 might be on that computer screen as opposed to what's on</p> <p>18 this Unifund statement?</p> <p>19 A. It's got the charge-off date, the last payment</p> <p>20 date, the last activity date, account number, date of</p> <p>21 birth, social security number.</p> <p>22 Q. Tell me what you show to be the charge-off</p> <p>23 date?</p> <p>24 A. Charge-off date was 1-13-2003.</p> <p>25 Q. And that reflects that the account went into</p>
Page 51	Page 53
<p>1 Exhibit A, it says, "This communication is from a debt</p> <p>2 collector. Federal laws requires us to inform you that</p> <p>3 this is an attempt to collect a debt and any information</p> <p>4 obtained will be used for that purpose"?</p> <p>5 A. I don't -- I mean, that's standard for debt</p> <p>6 collectors, and we -- all I can tell you is that it is</p> <p>7 sent to our law firm. We do not mail out those</p> <p>8 statements.</p> <p>9 Q. Okay. Is it typically added or attached to the</p> <p>10 petition or complaint that's filed in court, to your</p> <p>11 knowledge?</p> <p>12 A. I don't -- I've not seen it.</p> <p>13 Q. You have no idea?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. That's fine. Do you know when</p> <p>16 Ms. Huffman's account started with Citibank?</p> <p>17 A. I have her account was opened 4-1 of 1998.</p> <p>18 Q. And how do you have that information?</p> <p>19 A. It was obtained from Citibank.</p> <p>20 Q. When?</p> <p>21 A. When I requested it.</p> <p>22 Q. When was that?</p> <p>23 A. When I determined that we were going to go to</p> <p>24 litigation on this account.</p> <p>25 Q. Not at the time you signed the affidavit here</p>	<p>1 default sometime within a 180-day period before that;</p> <p>2 isn't that right?</p> <p>3 A. Yes.</p> <p>4 Q. It could have gone into default sometime like</p> <p>5 in July of 2002, more likely than not?</p> <p>6 A. I would say the last payment date was 11-4 of</p> <p>7 2002.</p> <p>8 Q. But do we know if that last payment rendered</p> <p>9 her current?</p> <p>10 A. No.</p> <p>11 Q. My point is, is that for accounting purposes a</p> <p>12 bank has to charge off an account six months or 180 days</p> <p>13 after it goes into default?</p> <p>14 A. That's correct.</p> <p>15 Q. And even if you make a payment during that six</p> <p>16 months or 180-day period, if that payment doesn't render</p> <p>17 the account current again, the clock is still running?</p> <p>18 A. That's correct.</p> <p>19 Q. And they still have to do -- charge it off 180</p> <p>20 days or six months after it initially went into default?</p> <p>21 A. You're correct.</p> <p>22 Q. Okay. My point being is this account may well</p> <p>23 have gone into default sometime in July of 2002 and</p> <p>24 remained in that status even though there was a payment</p> <p>25 in November of 2002?</p>